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Your reference:
Our reference: 152/590/543/124

16 May 2014

The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
Brisbane QLD 4000

By e-mail: sdiic@parliament.qld.gov.au

Dear Director,

Submission on the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014

I refer to the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 (**Bill**) that was referred to the State Development, Infrastructure and Industry Committee for consideration by the Deputy Premier and Minister for State Development, Infrastructure and Planning, Hon Jeff Seeney MP on 8 May 2014.

A response to key policy issues raised by the Bill in respect of infrastructure charges under the *Sustainable Planning Act 2009 (SPA)* is set out below.

I also **attach** a detailed submission on matters relevant to the proposed amendment of the SPA for the Committee's consideration.

1. Availability of detailed regulations, guidelines and other material

I note that it is very difficult to fully ascertain the impact of the Bill on Council's finances or development assessment processes without having access to the supporting regulations and guidelines referred to in the legislation.

2. Transition of Priority Infrastructure Plans (PIP)

Council's new City Plan 2014 including the new PIP is scheduled to commence on 1 July 2014. As such, the new PIP will not be an existing PIP immediately prior to 1 July 2014 and will not take effect as an LGIP under the Bill as it is currently drafted.

I recommend that the Bill should be amended to provide for the transition of the Brisbane City Council's new PIP in City Plan 2014 into the proposed framework.

3. Impact on local government finances and the provision of local infrastructure

The Bill provides for an approach to infrastructure charging that maximises the availability of 'offsets' to applicants while capping the amount of revenue available to local governments. Further, it encourages councils to apply average charges across their local government area. These aspects of the proposed framework will result in under-recovery of costs, inequity, reduced economic efficiency, and declining quality of infrastructure and services to local communities.

In addition, the Bill exposes Council to provide refunds for the provision of trunk infrastructure from Council's general revenue. This is a significant additional financial burden on Council in comparison to the current framework.

4. Increase in red-tape and slowing of the development approval process

The Bill requires local authorities to make commitments to expenditure earlier in the development assessment process than is required by the current framework. It also requires more information to be provided to applicants as part of a development approval. Whilst this seeks to increase applicants' certainty about their liabilities, it will have a significant negative impact on the time it will take to complete the assessment of development applications. For example, the Bill requires the details of offsets and refunds to be included in the Infrastructure Charges Notice to be issued for a development approval, which is likely to impact on decision times.

The above issues are exacerbated by the speed at which the proposed amendments are being introduced. With little more than a month to prepare for the revised framework, Council will not be able to adapt its business systems and budgets to mitigate the impact of the new requirements on its assessment processes. As an example, the Council's PIP and Adopted Infrastructure Charges Resolution will not align with the amended Act in reference to establishment costs, discounts, valuations methods and cost apportionment. This will cause confusion and increase the number of disputes between councils and applicants.

5. Greater uncertainty in the development process

The Bill provides for applicants to seek offsets for infrastructure that is not identified in the LGIP through an application to convert infrastructure to trunk infrastructure. This will create uncertainty in the development process because applicants and councils will not know the final infrastructure charge to be paid until the conversion application is decided or the infrastructure is constructed. This uncertainty is likely to lead to an increased number of disputes between applicants and councils.

Should you require any further information regarding these matters, please do not hesitate to contact Martin Reason on 3403 9758 or email martin.reason@brisbane.qld.gov.au.

Yours faithfully



Kerry Doss
Manager
City Planning & Economic Development

Attachment – Brisbane City Council detailed submission on Part 2 of the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 (as introduced to Parliament 8 May 2014)

16 May 2014

| New Section | Current Section | Proposed change | Description of issue – Policy issue, Drafting issue, Operational issue | Comment |
|------------------|-----------------|---|--|---|
| Chapter 6 | | | | |
| 347(1)(b) | 347(1)(b) | Conditions that cannot be imposed Replacement of section 347(1)(b) | Drafting issue - Section 347(1)(b)(ii) is uncertain. | Drafting issue - The drafting of section 347(1)(b)(ii) is uncertain in that the words "the imposition of a condition by a State infrastructure provider" do not relate to the introductory words. |
| Chapter 7 | | | | |
| 478 | 478 | Appeals about particular charges for infrastructure Replacement of section 478 | Policy issue - Whilst the section prevents an appeal about a decision in respect of the establishment cost of infrastructure in an LGIP or the value of the infrastructure decided adopting the method under section 657, it does not preclude an originating proceeding seeking a review of Council's decision on the basis that the establishment cost in an LGIP does not accord with the definition of establishment cost in the SPA or that the Council has misapplied the recalculation method under section 657. Drafting issue - Section 478(2)(a) contains a typographical error - the word "relevant" | Policy issues - The prohibition against an appeal should also be extended to originating applications. Drafting issue - Correct the drafting error in section 478(2)(a). |

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| | | | appears to be extraneous. | |
| 505 | 505 | Referee with conflict of interest not to be member of committee Insertion of subsection (2) | Drafting issue - Subsection (1) is uncertain. | Drafting issue - The drafting should be reviewed for certainty. |
| Chapter 8 | | | | |
| 625 | - | Simplified outline of chapter | Policy issue - The section does not identify the objects or purposes of the chapter as is currently the case. | Policy issue - The policy objects of the chapter as set out in the Explanatory Notes being certainty, consistency, transparency, support for local government sustainability and development feasibility should be stated in this section to assist with its interpretation. |
| 627 | - | Definitions for ch 8 Establishment cost | Operational issue - The definition of establishment cost is different from the current definition in that for existing infrastructure, works is based on values in the asset register and land is based on market value. Policy issue - The definition of establishment cost excludes the financing costs of future infrastructure. | Operational issue - The requirement for “current value” for all existing trunk infrastructure that is land will require market valuations to be undertaken for each property, in the absence of a guideline which specifies a methodology for valuing land. Policy issue - Given that the establishment cost of trunk infrastructure is only being used for the purpose of calculating offsets and refunds it is appropriate that the cost of the local government having to borrow to provide trunk infrastructure is excluded from the definition of establishment cost otherwise the value of an offset or refund |

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| | | | | would be inflated. |
| 627 | - | Definitions for ch 8 - PPI Index | Drafting issue - PPI Index should be PPI | Drafting issue - Suggest replacement of PPI Index with PPI |
| 629 | - | State planning regulatory provision governing charges Insertion of section 629 | <p>Policy issue - The SPRP (adopted charges) will be similar to the existing SPRP under the current capped framework other than for:</p> <ul style="list-style-type: none"> the inclusion of permitted development whereby the Minister has the power to prevent adopted charges being determined in a resolution for certain types of development may have financial costs to the Council; the inclusion of parameters for the methodology for calculating the cost of infrastructure for an offset and refund, may have financial costs as well as operational costs. <p>Policy issue - The application of a standard average charge with a 'cap' will result in under recovery, and distortions which will result in a lack of integration, inequity and economic inefficiency.</p> | Policy issue - The inclusion of the power to prohibit development from being subject to charges will lead to continuing under-recovery of costs for local governments and a reduction in the quality of infrastructure and services to local communities. |
| 630 | - | Power to adopt by resolution | Drafting issue - If the adopted charges in the charges resolution takes effect after the | Drafting issue - The legislation should require that the date in the charges resolution for an |

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| | | | <p>date stated in the charges resolution because it has not been uploaded to the website prior to the stated day, the date in the charges resolution will be incorrect on its face.</p> | <p>adopted charge to take effect should be amended to accord with the date the adopted charges in the charges resolution actually take effect.</p> |
| 630(1) and 635 | 648F | Levying a charge | <p>Drafting issue – The Bill does not explicitly provide for an adopted charge to be levied in accordance with a charge stated in an existing resolution.</p> <p>Section 635 provides that a local government may give the applicant an ICN levying a charge on the applicant in accordance with the <u>adopted charge</u>. 'Adopted charge' is defined in s. 630(1) as the charges adopted by a local government in its <u>charges resolution</u> made under s. 630(1).</p> <p>Section 979(1) provides for an adopted infrastructure charges resolution made under the current SPA to be transitioned, and continue in effect (an '<u>existing resolution</u>'). The Bill does not explicitly provide for an 'existing resolution' to be a 'charges resolution', such that a local government can levy a charge under s. 635 by applying the adopted charge in an existing resolution.</p> | <p>Drafting issue - The Bill should be amended to ensure that an existing resolution is taken to be a charges resolution.</p> |

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| | | | It is not clear whether s. 988 is sufficient to provide for an 'existing resolution' to be read with changes necessary for it to be a 'charges resolution'. | |
| 631 | - | Contents - general | <p>Policy issue - The existing CPI indexation arrangement has been replaced by a PPI indexation, which is expected to be more beneficial to the Council. This ensures that all indexes are reflected as PPI.</p> <p>Drafting issue - The PPI should have an option to be applied as an annual index rate.</p> | <p>Policy issue - The policy position of adopting the PPI is supported.</p> <p>Drafting issue – The Bill should be amended to provide for PPI to be applied as an annual index rate.</p> |
| 633 | - | Method for working out the cost of infrastructure | <p>Policy issue - The resolution must include a method for working out the cost of infrastructure the subject of an offset and refund being the trunk infrastructure identified in the LGIP or non-trunk infrastructure which is converted to trunk infrastructure by a conversion application.</p> <p>Policy issue - The method must be consistent with the SPRP (adopted charges) or any Ministerial guideline prescribed by a regulation which have yet to be released.</p> | <p>Policy issue - Given that some existing adopted infrastructure charges resolutions do not include a methodology for working out trunk infrastructure costs, and that these existing adopted infrastructure charges resolutions are assumed to be transitioned as charges resolutions, it would be more appropriate to defer the provisions of s657 relating to the working out of costs for offsets and refunds until a local government prepares a charges resolution under the amended SPA.</p> <p>Policy issue - Whilst the need for consistency across Queensland is appreciated, too prescriptive requirements in relation to the working out of trunk infrastructure costs will limit</p> |

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| | | | | the ability to take account of the individual circumstances of the infrastructure networks of individual local governments. Accordingly more generalised parameters are favoured in place of more specific parameters in any guideline prepared by the Minister. Engagement with local government in the preparation of a guideline would be recommended. |
| 635 | 648F | When charge may be levied and recovered | <p>Policy issue - An ICN can only be issued in respect of development for which the Council has given a development approval, with the effect that an ICN cannot be issued for exempt or self-assessable development. This will encourage local governments to ensure development is made assessable development so that ICNs can be issued.</p> <p>Policy issue – Sections 635(1)(a) and (3)(a) result in the Council being unable to issue an ICN where:</p> <ul style="list-style-type: none"> • it is not the responsible entity that has given a development approval (for example, if the Court has given a development approval), or • it is not the assessment manager or a concurrence agency. <p>Drafting issue - There is an inconsistency</p> | <p>Policy issue - This section should be reviewed to enable the issue of ICNs for exempt and self-assessable development in order that local governments do not have to impose higher levels of assessment for development in their planning schemes in order to require charges to be paid for demand generated by these developments.</p> <p>Policy issue – This section should be amended to ensure that the Council can still issue an ICN where:</p> <ul style="list-style-type: none"> • it is not the responsible entity that has given a development approval (for example, if the Court has given a development approval), or • it is not the assessment manager or a concurrence agency. <p>Drafting issue - The inconsistency in the section</p> |

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| | | | <p>between sections 635(1)(a) and (3)(a)(ii) in that Council gives a development approval if it is an assessment manager and provides a concurrence agency response if it is a concurrence agency, and cannot give both.</p> | <p>should be corrected.</p> |
| 637 | 648F(1) | Requirements for infrastructure charges notice | <p>Operational issue - An ICN must state whether an offset or refund applies and if so, the details of the offset or refund. The requirement to identify “details” of an offset or refund is uncertain. If it is intended that the exact amount of an offset or refund is to be included in an ICN, this will create a significant administrative burden as part of the development assessment process given that, for example, s649(3) requires that a refund be calculated taking into account the proportion of externally serviced premises, levied charges collected, etc. This will create delays and uncertainty that are further exacerbated by the fact that the State government has not yet made parameters for working out an offset or refund available, in addition to the operational issue outlined below.</p> <p>Operational issue - In order to identify the offset and refund in an ICN it will be necessary to work out the cost of the trunk</p> | <p>Operational issue – The requirements for content of an ICN will lead to significant administrative burden, delays and uncertainty as part of the development assessment process and appear to be unworkable given that there is no certainty that the State government will make the parameters available prior to 1 July</p> <p>Operational issue - The requirement to identify details of offsets and refunds appears to require the application of establishment costs in existing PIPs or AICRs. The current values of establishment costs and AICRs are not based on the definition of establishment cost under the amended SPA, and as such it will be necessary to amend those costs to reflect the new definition, creating further uncertainty and administrative burden in the identification of costs of offsets and refunds.</p> <p>Accordingly it may be sensible to defer the requirement for the stating of offsets are refunds until a LGIP has been prepared on the basis of establishment costs using the new definition</p> |

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| | | | <p>infrastructure. This will require reference to the establishment cost of infrastructure in the schedule of works in the plans for trunk infrastructure in the LGIP (although this is by no means clear). The definition of establishment cost under the current capped framework is materially different to the definition of establishment cost under the proposed capped framework. The effect of this is that the cost of infrastructure stated in a PIP under the current capped framework, which is a deemed LGIP under the proposed capped framework, is not the establishment cost of infrastructure for the purpose of determining an offset or refund under the proposed capped framework.</p> | <p>under the amended SPA.</p> |
| 646(2)(b) | 649 | Necessary infrastructure condition for LGIP-identified infrastructure | Drafting issue - The term desired standard of service is not defined but is used in section 646(2)(b). | Drafting issue - It is suggested that the term desired standard of service is defined. |
| 646 and 647 | 649 and 650 | Necessary infrastructure condition | <p>Drafting issue – Section 67(3) prevents a condition from being imposed for adequate trunk infrastructure identified in the LGIP if development is inconsistent with the LGIP or is for premises partly or wholly outside of the PIA.</p> <p>The effect is that the Council will not be</p> | <p>Drafting issue – Sections 646 and 647 should be redrafted to take account of the drafting issues identified to ensure that local government conditioning powers for infrastructure contributions are not uncertain or limited. Consideration may also need to be given to amending the definition of “trunk infrastructure” in s627 to include development infrastructure the</p> |

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| | | | <p>able to condition the provision of trunk infrastructure identified in the LGIP which is necessary to service premises where the development is:</p> <ul style="list-style-type: none"> • outside of the PIA • partly outside of the PIA • within the PIA, but otherwise inconsistent with the assumptions about type, scale, location or timing of future development. <p>Drafting issue – The reference to “or” in section 647(3)(a) should be “and”.</p> <p>Drafting issue – Given that the premise of s647 is that the LGIP has not identified adequate infrastructure to service the premises, the reference to “trunk infrastructure” in subsection (2) appears to be incorrect as the definition of “trunk infrastructure” in s627 means both of the following:</p> <ul style="list-style-type: none"> • development infrastructure identified in the LGIP as trunk infrastructure; • development infrastructure that, because of a conversion application, | <p>subject of a necessary infrastructure condition imposed under s647.</p> <p>It is suggested that s647 be amended such that it empowers the imposition of a necessary trunk infrastructure condition for infrastructure that services development that is:</p> <ul style="list-style-type: none"> • outside of the PIA • partly outside of the PIA • within the PIA, but otherwise inconsistent with the assumptions about type, scale, location or timing of future development. |

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| | | | <p>becomes trunk infrastructure.</p> <p>This drafting issue has consequences for references to “trunk infrastructure” elsewhere in the Bill, for example, in s649, resulting in uncertainty about the operation of the requirements in respect of offsets or refunds in relation to trunk infrastructure the subject of a necessary infrastructure condition imposed under s647. See comments below in relation to s649.</p> | |
| 649 | - | Offset or refund requirements | <p>Policy issue – The new section requires Council to provide refunds for the provision of trunk infrastructure identified in an LGIP required as a necessary infrastructure condition for the proportion of the establishment cost of the trunk infrastructure that:</p> <ul style="list-style-type: none"> • may be apportioned reasonably to users of premises other than the subject premises; and • has been, or is to be the subject of a levied charge. <p>This reflects a change in policy position as the current capped framework requires Council to pay a refund from charges that</p> | <p>Policy issue - The changed policy position will have a significant financial impact on local governments.</p> <p>Drafting issue - If Council's interpretation of the assumed operation of section 649(3)(b) is not correct, this is a critical issue which should be raised with local governments. If the Council's interpretation of section 649(3)(b) is correct, Council remains concerned that the drafting is uncertain and may give rise to ongoing appeals and administrative costs.</p> <p>Operational issue - See comments above in relation to new section 637 for the calculation of offsets and refunds.</p> |

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| | | | <p>have been or are to be collected from premises serviced by the relevant trunk infrastructure. The effect of the proposed amendment is significant, in that Council will be required to pay a refund from its general revenue rather than from charges collected.</p> <p>Drafting issue - Section 649(3)(b) is interpreted to mean that refunds are not payable in respect of trunk infrastructure that has not been or is not subject to a levied charge namely that which is not included in an LGIP and has been imposed as a necessary infrastructure condition under section 647.</p> <p>Section 649(3)(b)(i) requires for the calculation of a refund the apportionment of the establishment cost of trunk infrastructure that is to be provided between users of the subject premises and users of other premises. The definition for establishment costs refers to “a provision for trunk infrastructure”. Given that the infrastructure required by a necessary trunk infrastructure condition under section 647 cannot be trunk infrastructure, it would appear that the definition of establishment cost is not applicable to the calculation of</p> | |

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| | | | <p>the refund.</p> <p>Operational issue - The Council will have to calculate the amount of an offset and refund so that it can be stated in an ICN.</p> | |
| 650 | 650 and 651 | Power to impose | Drafting issue - In section 650(1)(a)(ii) 'new trunk infrastructure' should be 'future trunk infrastructure'. | Drafting issue - Correct the drafting issue in section 650(1)(a)(ii). |
| 654 | - | Refund for additional payment condition for development in PIA | Drafting issue - There are subtle differences in the drafting between the provisions of this section and section 649(3) the significance of which is hard to distinguish. | <p>Policy issue - See comments in relation to section 649.</p> <p>Drafting issue - The drafting inconsistency should be resolved.</p> |
| 657 | - | Process | Operational issue - Unlike the current capped framework and previous uncapped framework, the local government, where requested by an applicant, must recalculate the establishment cost of the trunk infrastructure using the method in the charges resolution and amend the ICN accordingly. | Operational issue - The provision should be amended to clarify that the recalculation process must occur prior to the relevant stated time for payment of a levied charge under s638(1) and as such cannot occur subsequent to that time to ensure that there is a finality to the process. |
| 658 and 659 | - | <p>Application of sdiv 1</p> <p>Application to convert infrastructure to trunk infrastructure</p> | Operational issue - The criteria relevant to a decision about a conversion application may be prescribed by a regulation. It is assumed that Council can state decision | Operational issue - In the absence of the regulation identifying the decision criteria for a conversion application, it is near impossible to provide comment on the practical effect of the |

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| | | | <p>criteria for a conversion application consistent with the trunk infrastructure planning provisions in its LGIP.</p> <p>Policy issue – A conversion application should only apply in respect of conditions for non-trunk infrastructure under the amended SPA and should not apply to conditions previously imposed before the commencement of the amended SPA.</p> | <p>operation of the conversion application. However the regulation should provide flexibility for a local government to identify decisional criteria as well.</p> <p>Policy issue - Section 658 should be amended to clarify that the conversion application only applies to conditions requiring non-trunk infrastructure imposed under section 665 of the amended SPA.</p> |
| 665 | 626 | Conditions local governments may impose | <p>Policy issue - Section 5.1.28 of the former IPA relevantly provided the following examples of a condition for safety or efficiency of State infrastructure provider's network, in that case, DTMR. Given that Council's major trunk infrastructure responsibility is roadworks, it may be prudent to include similar examples are included in 665(2)(c):</p> <p>Examples of a condition for safety and efficiency</p> <p><i>1 a deceleration lane and entry access to a shopping centre development</i></p> <p><i>2 traffic signals at an intersection 1 block from a shopping centre development</i></p> <p><i>3 upgrading transverse drainage under a State-controlled road because of increased hard stand parking area from development</i></p> <p><i>4 road shoulder widening added to</i></p> | <p>Policy issue - Examples should be provided as to the operation of section 665(2)(c) to illustrate the operation of paragraph (c).</p> |

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| | | | <p><i>reconstruction of a road because of increased traffic loading to stop road edge wear</i></p> <p><i>5 provision of a bus stop and adjacent pull-in bay in a large residential subdivision to accommodate a public passenger transport service</i></p> <p><i>6 provision of a bus turning lane at an intersection for a shopping centre development because of increased traffic loading</i></p> <p><i>7 upgrade of traffic control devices at a rail level crossing because of increased vehicular crossings from nearby residential development</i></p> | |
| 669 | 653 | Reimbursement by local government for replacement infrastructure | Policy issue - This section is likely to impact the Council, in particular, given the concentration of infrastructure with State significance in the Council's local government area. The scope of potential financial consequences is uncertain. | Policy issue - This clause appears to be wide-reaching and some consideration should be given to clarifying its scope and limiting its operation. |
| 673 | 662 | Copy of infrastructure agreement to be given to local government | Operational issue - A distributor-retailer, having been excluded from the definition of public sector entity, does not have to provide a copy of an infrastructure agreement to the Council. | Operational issue - Council needs to have access to QUU infrastructure agreements in order to manage existing transitional arrangements. |
| 679 | | Trunk infrastructure not identified | Drafting issue – This section appears to be directed at defining trunk infrastructure | Drafting issue – Section 679(1) should be amended to make it clear that the section only |

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| | | | where a local government does not have a LGIP, however, by referring to the definition of “trunk infrastructure” the current drafting of s679(1) does not reflect this. | applies where a local government does not have a LGIP, so as to not have unintended consequences for identifying trunk infrastructure and non-trunk infrastructure where a local government <i>does</i> have a LGIP. |
| Chapter 10 | | | | |
| 975 | - | Definition of PIP | Policy issue – Given that new City Plan 2014 including the new PIP is schedule to commence on the 1 July 2014, the new PIP will not be an existing PIP immediately prior to the 1 July 2014, and as such will not take effect as an LGIP, and will not be migrated as an LGIP. | <p>Policy issue - An amendment needs to be included to ensure that in the case of Brisbane (and other local governments currently preparing QPP planning schemes) that a new PIP that will take effect after 30 June 2014 (but MALPI commenced) will be an LGIP for the purposes of the amended SPA.</p> <p>It is suggested that the definition of PIP in section 975 be amended as follows:</p> <p>PIP means a priority infrastructure plan which:</p> <p>(a) is in effect before commencement; or</p> <p>(b) takes effect after commencement, if prior to commencement a local government has, in substantial compliance with the process stated in a guideline made under section 117:</p> <p style="padding-left: 40px;">(i) for making a priority infrastructure plan, carried out public consultation;</p> <p style="padding-left: 40px;">(ii) for amending a priority infrastructure</p> |

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| | | | | <p>plan which:</p> <p>(A) requires public consultation, carried out public consultation; or</p> <p>(B) does not require public consultation, decided to adopt the amendment.</p> |
| 979 | - | Charges resolutions until 1 July 2016 | <p>Drafting issue - It is unclear whether an ICN can be issued after the commencement of the amended Act with reference to an existing resolution which continues in effect under section 979 (Charges resolutions until 1 July 2016).</p> <p>Drafting issue - Typographical error on page 72, line 25 - "required" should be "desired".</p> <p>Drafting issue - Typographical error on page 72, line 26 - "costs" should be "cost".</p> | Drafting issues - The drafting issues should be resolved. |
| 982 | - | PIP to LGIP | Policy issue – see section 975 | Policy issue - See comments with respect to section 975. It is suggested that the definition of PIP needs to be amended in order to ensure that the PIPs of local governments which have been through public consultation but are yet to be adopted are able to be recognised as an |

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| | | | | LGIP. |